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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAVID M. CATHCART, JAMES H.
WHITEHEAD, ROBERT W. DECKER, DALE
BALDISSERI, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

SARA LEE CORPORATION, SARA LEE
BAKERY GROUP, EARTHGRAINS BAKING
COMPANIES, INC. (formerly sued as DOE 1)
and DOES 2 through 20,

Defendants.

Case No. CV 09-5748 MMC

**STIPULATION TO MODIFY THE
SCHEDULING ORDER TO CONTINUE
DEADLINE FOR MOTION FOR CLASS
CERTIFICATION, TO ALLOW FILING
OF MOTION FOR SUMMARY
JUDGMENT ON FAAAA IN ADVANCE
OF CERTIFICATION BRIEFING, AND
TO SET A BRIEFING SCHEDULE FOR
CONDITIONAL CERTIFICATION**

[PROPOSED] ORDER

The Honorable Maxine M. Chesney

1 The parties stipulate as set forth in the paragraphs below, based on the following facts:

- 2 A. The Scheduling Order (Dkt. #33) set forth initial deadlines in this case. The Order
3 scheduled, among other things, dates for briefing the parties' initial motions and
4 cross-motions for partial summary judgment, a date for the hearing on partial
5 summary judgment, dates for briefing class certification, and dates for the hearing on
6 class certification and a status conference.
- 7 B. Since then, pursuant to stipulated orders, those dates and others have been continued,
8 to accommodate document production, a class action jury trial by counsel for
9 Plaintiffs in another case, a change in Defendants' corporate ownership, a consequent
10 change in the attorneys of record for Defendants, a mediation, and other matters.
11 (Dkt. #52, 56, 58, 60, 68, 77, 79, 84.)
- 12 C. Based on recent developments described below, the parties now jointly request an
13 additional extension, of approximately 90 days, of the deadlines for the motion for
14 class certification and other deadlines in the amended scheduling order, and the
15 parties jointly request that Defendants be permitted to file a motion for partial
16 summary judgment on Plaintiffs' remaining meal period claims (and all other claims
17 derivative of such claims) based on a defense under the Federal Aviation
18 Administration Authorization Act (FAAAA) that certain courts have applied to
19 dismiss meal period claims, and certain courts have determined not to apply.
- 20 D. The parties participated in a mediation in San Francisco on March 22, 2012. They
21 did not reach a settlement, but they are continuing to negotiate. They are also
22 attempting to resolve or narrow some of the issues through stipulations and motions
23 for partial summary judgment, as evidenced by the parties' recent stipulation to the
24 partial dismissal of Plaintiffs' meal period claims approved by the Court. Until very
25 recently, discovery has focused on Defendants' defense under California Labor Code
26 514, which has now been resolved by the ruling on Defendants' motion for partial
27 summary judgment on that defense. This staged discovery is pursuant to the
28 scheduling order as amended (e.g. by Dkt #56). Also, very recently Defendants filed

1 a motion to amend their answer.

2 E. The parties promptly moved forward with discovery after the mediation. The parties
3 have scheduled the depositions of Defendants' 30(b)(6) witness (Plaintiffs have
4 referred to these as the depositions of Defendants under Rule 30(b)(6)) and
5 depositions of Plaintiffs, to take place in late May and mid-June 2012. The parties
6 have been working since April 2012, beginning almost immediately after the
7 mediation, to negotiate the scope and timing of depositions and other discovery.
8 Defendants have responded and objected to additional written discovery served by
9 Plaintiffs, Plaintiffs will serve responses and objections to Defendants' additional
10 written discovery next week, and the parties have scheduled an in-person conference
11 for next week as to certain discovery disputes. If those discovery disputes cannot be
12 resolved, Plaintiffs plan to bring them before the Magistrate Judge, and Plaintiffs
13 believe that resolution of some of these disputes will be important for their motion for
14 class certification. Defendants believe that their planned motion for summary
15 judgment as to the remaining meal period claim and related derivative claims (i.e.
16 claims of any nature arising out of alleged meal period violations prior to January 1,
17 2011) pursuant to the FAAAA will narrow the scope of issues to be briefed as to
18 class certification and/or facilitate a resolution of the action. *However, currently the*
19 *deadline to file a motion for class certification is only two months away, July 27,*
20 *2012.*

21 WHEREFORE, THE PARTIES STIPULATE and request that the Court order that the
22 Scheduling Order (Dkt. #33 and #84) be modified to reflect the deadlines listed below, which, on
23 the motion for class certification, retains the same intervals between the motion, opposition, and
24 reply:

25 **MOTION FOR CLASS CERTIFICATION**

- 26 1. Deadline for Plaintiffs to file motion for class certification: extended from July 27, 2012
27 to October 31, 2012.
28 2. Deadline for Defendants to file opposition to motion for class certification: extended

1 from September 14, 2012 to December 19, 2012.

2 3. Deadline for Plaintiffs to file reply in further support of motion for class certification:
3 extended from November 2, 2012 to February 6, 2013

4 4. Hearing on motion for class certification: continued from December 14, 2012 to March 8,
5 2013 at 9:00 a.m.

6 **MOTION FOR CONDITIONAL CERTIFICATION**

7 5. Plaintiffs agree not to oppose Defendants' recent motion to extend the Local Rules'
8 standard briefing schedule for the pending Motion for Conditional Certification, without
9 prejudice to the position of any party for or against any extension of the time to move for
10 class certification beyond the one agreed to in this stipulation..

11 **MOTION FOR PARTIAL SUMMARY JUDGMENT ON FAAAA DEFENSE**

12 6. Defendants may file a motion for partial summary judgment on their defense under the
13 FAAAA at any time after the first day of the deposition pertaining to the FAAAA, and
14 before July 27, 2012. To the extent that there is any dispute as to the scope of the
15 deposition on these subjects that cannot be resolved by the parties, the parties shall
16 cooperate to seek the Court's resolution of the dispute as to the scope so that the
17 resolution occurs at least three weeks before July 27 so that such deposition then can be
18 completed at least 10 days in advance of July 27.

19 7. Plaintiffs' opposition to said motion for partial summary judgment shall be filed by 21
20 days after the filing of the motion.

21 8. Defendants' reply in response to Plaintiffs' opposition to said motion for partial summary
22 judgment shall be filed by 21 days after the filing of the opposition.

23 9. The hearing on said motion for partial summary judgment shall be 49 days after the filing
24 of the motion, or on such later date as the Court orders.

25
26 **CASE MANAGEMENT**

27 10. Joint Case Management Conference Statement due date: continued from December 14,
28 2012 to April 5, 2013.

1 11. Case Management Conference: continued from December 21, 2012 to April 12, at 10:30
2 a.m.

3 In compliance with General Order No. 45 (X), as filing party, Plaintiffs attest that all signatories
4 below concur in the filing of this document.

5 DATED: May 17, 2012

MORGAN, LEWIS & BOCKIUS LLP

6 BY: /s/ Michael Puma
7 Michael Puma
8 Attorneys for Defendants

9 DATED: May 17, 2012


SPIRO MOORE LLP

10 BY: /s/ Ira Spiro
11 Attorneys for Plaintiffs

12 **~~[PROPOSED]~~ ORDER**

13 SO ORDERED as stated in paragraphs 1 through 11 above; the hearing on the motion for
14 summary judgment on the FAAAA defense, however, shall be noticed for hearing no less than
15 56 days after the filing of the motion.

16 DATED: May 21, 2012

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18 MAXINE M. CHESNEY
19 United States District Judge
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